

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SLUSH PUPPIE LIMITED,)	Case No: 1:19-cv-00189-MRB
)	
Plaintiff,)	JUDGE MICHAEL R. BARRETT
)	
v.)	MAGISTRATE JUDGE BOWMAN
)	
THE ICEE COMPANY,)	
)	
Defendant.)	

**PLAINTIFF/COUNTERCLAIM DEFENDANT SLUSH PUPPIE LIMITED’S
NOTICE OF NON-FILING OF REPLY BRIEF ON MOTION TO DISMISS**

Plaintiff Slush Puppie Limited (“SPL”) hereby notifies the Court and counsel of record that it will not be filing a Brief in Reply in support of Plaintiff’s Motion to Dismiss the ICEE Company’s Counterclaims and First Amended Counterclaims. Plaintiff gives this notice on the grounds that, since the filing of its initial principal Dismissal Motion, Defendant has filed an Amended Counterclaim (an Amended Counterclaim that dramatically, and improperly, expands what the parties briefed and argued, and what this Court permitted as to Defendant’s Amended Counterclaim during the February 6, 2023 Oral Arguments).¹ Consequently, since SPL will be responding to the Amended Counterclaim on or before April 17, 2023, SPL incorporates by reference herein that upcoming filing, which will relate to the dramatically and improperly expanded Amended Counterclaim that is now before the Court. SPL hereby reserves and does not waive any rights or arguments, especially as to the arguments set forth in SPL’s Dismissal Motion.

¹ For the Court’s convenience, the Counterclaim that Defendant represented to all counsel of record and the Court that it would be filing after the Court granted its Motion for Leave to Amend Counterclaim on February 23, 2022, is attached hereto as **EXHIBIT A**. The Court’s order as to that particularly phrased Counterclaim is attached hereto as **EXHIBIT B**.

Respectfully submitted,

BENESCH, FRIEDLANDER, COPLAN
& ARONOFF LLP

/s/ Eric L. Zalud

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CERTIFICATE OF SERVICE

The foregoing was filed electronically on April 11, 2023. Notice of this filing will be sent to all parties registered with the Court's electronic filing system by operation of the Court's system. Parties may access this filing through the Court's electronic filing system.

/s/ Eric L. Zalud

Eric Larson Zalud

Attorney for Plaintiff Slush Puppie Limited